IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

ITA.No. 196 of 2000()

ITA.4COCH/1998 of I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT

MRS.THEYYAMMA PAUL,
TRICHUR

BY ADV. SRI.KMV.PANDALAI
SRI.P.J.JACOB

RESPONDENT:

THE ASSISTANT COMMISSIONER OF INCOME TAX,
INVESTIGATIONCIRCLE I,
DIVISION I, TRICHUR.

BY ADV. SRI.P.K.R.MENON(SR.),SR.COUNSEL FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

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I.T.A. NO. 196 OF 2000

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DATED THIS, THE 4TH DAY OF DECEMBER, 2006.

J U D G M E N T

Raman, J.

The assessee is the appellant herein. This appeal is directed against the order passed by the Income Tax Appellate Tribunal, Cochin Bench, in IT (S&S) A No.4/Coch/98, dated 24.2.1999, confirming the assessment made by the Assistant Commissioner of Income Tax, under Section 158 BC of the Income Tax Act for the block period 1.4.1986 to 12.12.1986.

2. The facts of the case, in brief, is as follows:

The authorized officer conducted a search under Section 132 of the Income Tax Act at the residential premises of the appellant/ assessee and seized details of unaccounted investments made by her in benami names. In the sworn statement under Section 132(4), the assessee admitted that she sold a land and building at Mannuthy for a consideration of Rs. 40 lakhs and that she received Rs. 15 lakhs over and above the consideration recorded in the registered deed and deposited the same in the names of very close relatives

as Fixed Deposits in Banks. Since a prima facie case of evasion of income existed, a notice under Section 158BC was issued, upon which the assessee filed a return of income declaring an amount of Rs. 42,610/- as undisclosed income. Rejecting the contentions raised by assessee, the assessisng officer proceeded to assess the sum of Rs. 15 lakhs received as part of sale consideration and deposited in benami accounts as undisclosed income. The appellate authority also confirmed the decision of the assessing authority. Aggrieved thereby, the assessee has preferred this appeal.

3. It was the specific contention of the assessee before the tribunal that what was transferred is not only immovable properties but also the whole of the business as a going concern and as such the amount of Rs. 15 lakhs cannot be attributed towards consideration proceeded for immovable properties and subject to capital gains. She also placed reliance on the partnership deed executed on the same day and requested the tribunal to take these facts also into consideration. The tribunal, after referring to the partnership deed found that 2% profit is payable by the assessee from out of the profit received from the business in the form of capital gain and she is also liable to share the loss. Hence the contention of the assessee that what was sold was a going concern was rejected. According to the learned counsel appearing for the assessee other than the submission made by the

assessee at the time of search, there is no other evidence to show that 15 lakhs received is towards sale consideration. It is also his contention that since she was having a licence under the Abkari Act, partnership itself was necessitated so as to enable the firm to continue the business using the same licence. We are afraid, this contention cannot be raised since the transfer of a licence under the Abkari Act is clearly prohibited. Further, as per the partnership the assessee retains his interest in the business. The contention that the whole of the business was transferred in such circumstances, cannot be accepted. If as a matter of fact, the amount of Rs. 15 lakhs was received towards sale consideration of the movable properties which were not the subject matter of the sale deed, nothing prevented the parties from showing this amount as separately received or at least this would have been shown as her contribution towards the capital in the firm. By doing so, there is no disadvantage to the parties and the appellant is only stand to gain since if this 15 lakhs received is consideration for movable properties then necessarily, she will not be liable to be subjected to any tax. On the other hand, the statement given at the time of search clearly shows that sale consideration was shown as only 25 lakhs whereas she received an amount of 40 lakhs towards sale consideration. This submission along with the attendant facts clearly shows that the sale consideration received by the

assessee was 40 lakhs and not 25 lakhs. Both the parties stand to gain by showing the reduced amount in the document. In the circumstances, the view taken by the Tribunal is correct. No interference is called for.

Accordingly, the appeal is dismissed.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-

P.R. RAMAN &
K.P. BALACHANDRAN, JJ.
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I.T. APPEAL 196/2000

J U D G M E N T

4.12.2006.